Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

BRUCE VAN VOORHIS, JUDGE OF THE SUPERIOR COURT OF CONTRA COSTA COUNTY,

Petitioner,

v.

COMMISSION ON JUDICIAL PERFORMANCE,

Respondent.

On Petition for Writ of Certiorari
To the California Supreme Court No. S116146
Commission on Judicial Performance Inquiry No. 165

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

1. Whether the California Commission on Judicial Performance's decision removing Superior Court Judge Bruce Van Voorhis violated Judge Van Voorhis' procedural due process rights under the 14th Amendment of the United States Constitution?

2. Whether the California Commission on Judicial Performance's refusal to permit a separate dispositional hearing and an opportunity for Judge Van Voorhis to present dispositional evidence violated Judge Van Voorhis' due process rights under the 14th Amendment of the United States Constitution?

II. PARTIES TO THE PROCEEDING

1. California Commission on Judicial Performance

The California Commission on Judicial Performance (hereafter "commission") was established in California by voter referendum in the November 1960 election. The commission is responsible for the investigation of complaints of judicial misconduct and incapacity and for the discipline of judges, former judges and court commissioners and referees. The commission's authority is limited to investigation and discipline of judicial misconduct, which usually involves conduct in conflict with the Code of Judicial Ethics. The commission's authority is set forth in article VI, sections 8, 18, 18.1 and 18.5 of the California Constitution. The commission has the authority to discipline or remove a judge subject to review by the California Supreme Court. (Cal. Const., art VI, sec. 8, 18.) Article VI, section 18(i) of the California Constitution authorizes the commission to make rules for conducting investigations and formal proceedings. There rules are found in the commission rules 101 through 138 which were adopted by the commission on October 24, 1996, and took effect December 1, 1996.

Pursuant to the California Constitution, article VI, section 8, the commission is composed of eleven members: one justice of a court of appeal and two trial court judges, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. The Chairperson is the Honorable Rise Jones Pichon of the Santa Clara Superior Court in San Jose.

2. Bruce Van Voorhis

Bruce Van Voorhis was elected as a judge of the Contra Costa Municipal Court in California and took office on January 5, 1987. On June 8, 1998, Judge Van Voorhis was elevated to the Contra Costa County Superior Court as a result of the consolidation of the courts. Judge Van Voorhis served as a superior court judge from that time until February 27th, 2003, when the California Commission on Judicial Performance issued its decision and order removing Judge Van Voorhis from office.

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V. BASIS FOR JURISDICTION

The California Supreme Court denied Judge Van Voorhis' Petition for Review on September 10th, 2003. The United States Supreme Court has jurisdiction to review the denial of the petition pursuant to 28 USC section 1257.

VI. CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment of the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV, § 1.

VII. STATEMENT OF THE CASE

In May 2001, the commission sent a preliminary investigation letter to Judge Van Voorhis. Following Judge Van Voorhis' response, a Notice of Formal Proceedings was filed by the Commission on December 17th, 2001. Judge Van Voorhis then filed his verified answer on January 2nd, 2002.

On January 25th, 2002, at the request of the commission, the California Supreme Court appointed three special masters to hear the matter: Justice Thomas Hollenhorst of the Court of Appeal, Fourth Appellate District, presiding; Justice Kenneth Yegan of the Court of Appeal, Second Appellate District; and Judge Thompson Hanks of the Superior Court of Riverside County.

The evidentiary hearing pursuant to commission rule 121 was held before the three special masters from June 24th through June 27th, 2002. At the time of the evidentiary hearing, commission rule 134 required that "[t]he affirmative vote of six members of the commission who have considered the record and report of the masters and who were present at any oral hearing as provided in rule 121 . . . is required for . . . removal of a judge . . . ." Rules of the Commission on Judicial Performance, rule 134; Emphasis added. None of the eleven members of the commission attended Judge Van Voorhis' rule 121 oral hearing before the three appointed special masters.

On September 6th, 2002, the special masters submitted their findings of fact and conclusions of law to the commission. The matter was then briefed and argued pursuant to commission rule 132 before ten of the eleven

members of the commission on December 4th, 2002.[1] Immediately after the oral argument, the commission members retired to deliberate. On February 27th, 2003, the commission issued its written decision and order removing Judge Van Voorhis from office. The commission vote was 8-2 in favor of removal.[2] On March 3rd, 2003, Judge Van Voorhis then made a request to the commission to submit additional evidence relevant to the issue of whether removal was an appropriate sanction. This request was denied.

In his subsequent petition for review of the commission's decision before the California Supreme Court, Judge Van Voorhis argued, among other things, that the removal order violated his procedural due process rights because the eight commission members who voted to remove Judge Van Voorhis did not attend the rule 121 hearing before the Masters. The California Supreme Court denied Judge Van Voorhis' petition for review without explanation on September 10th, 2003.

Judge Van Voorhis first raised the constitutional issues that are now presented to this Court in the California Supreme Court. However, as a practical matter, it should

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[1] Rule 132 provides: "Upon receipt of the masters' report and any objections, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be mailed to the judge, at least 10 days prior thereto." (Rules of the Commission on Judicial Performance, rule 132.)

[2] Commission rule 134 was amended on January 29th, 2003. The amendment changed the requirement that six members of the commission attend the rule 121 hearing. Instead, a commission member was entitled to vote if he or she was present at the rule 132 hearing. Ten of the eleven Commission members did in fact attend the rule 132 hearing.

be noted that the issue of whether the commission complied with rule 134 does not arise until the commission members actually vote. Thus, the first opportunity for Judge Van Voorhis to raise this issue was with the California Supreme Court after the commission rendered its decision on February 27th, 2003.

VIII. LEGAL ARGUMENT

The Due Process Clause prohibits governmental deprivation of an individual's life, liberty, or property without due process of law. To determine whether governmental action affecting an individual's interest is violative of this provision, the first step in the analysis is to inquire whether the nature of the interest is within the contemplation of the Constitution's "liberty or property" language. Morrissey v. Brewer, 408 U.S. 471, 481 (1972). A protectible liberty interest may arise from two sources -- the Due Process Clause itself or the laws of the states. Hewitt v. Helms, 459 U.S. 460, 466 (1983).

The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in "liberty" or "property." Matthews v. Eldridge, 424 U.S. 319, 332 (1976). After finding the deprivation of a protected interest, the next step is to determine whether the State's procedures comport with due process. Id. at p. 332.

In Matthews v. Eldridge, 424 U.S. at p. 335, this Court detailed the factors to be considered when there is a claim that an administrative procedure which affects private interests denies due process. Those are: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

California state law defines what is property in this matter. See, Board of Regents of State Colleges v. Roth, 408 U.S. 564, 579 (1972). Here, Judge Van Voorhis has a property interest in his continued employment as a superior court judge in Contra Costa County. The property interest arises from the California State Constitution, Article VI, section 18 and the Rules of the Commission on Judicial Performance. These rules, in particular commission rule 134, guarantee a judge certain procedural safeguards before the State of California can discipline or remove a judge for alleged misconduct.

One such procedural safeguard required the attendance of the commission members who intended to vote on the disposition of a judge at the rule 121 oral hearing before the appointed special masters. Until its amendment on January 29th, 2003, commission rule 134 provided:

> The commission may privately or publicly admonish, censure, remove or retire a judge, or find a person unfit to serve as a subordinate judicial officer. The affirmative vote of six members of the commission who have considered the record and report of the masters and who were present at any oral hearing as provided in rule 121 or, when the hearing was before the commission without masters, of six members of the commission who have considered the record, and at least four of whom were present when the evidence was produced, is required for a private or public admonishment, censure, removal or retirement of a judge, or a

finding that a person is unfit to serve as a subordinate judicial officer, or for dismissal of the proceedings. (Emphasis added.)

This version of rule 134 was in effect at the time of Judge Van Voorhis' rule 121 hearing and its requirements are mandatory. In order to vote upon the disposition of Judge Van Voorhis, the commission members were required to attend the rule 121 evidentiary hearing. Not one member of the commission attended the rule 121 hearing. The record of the proceedings reflects that commission counsel, counsel for Judge Van Voorhis and Judge Van Voorhis were present, but it does not indicate that any of the commission members were present during any portion of the hearing. Notably, the commission does not dispute that its members failed to attend the evidentiary hearing. (Appendix, at p. 147.)

Because none of the ten commission members who voted on the disposition in this matter attended the evidentiary hearing, the vote did not comply with the mandatory requirements of rule 134 and, as a result, Judge Van Voorhis was deprived of a significant due process right. As a procedural matter, it is fundamentally unfair for the commission to ignore its own rules in reaching a determination that Judge Van Voorhis should be removed. This is especially true in a case with so many disputed issues of fact and where viewing the demeanor of a witness testifying can be crucial to properly evaluating and weighing conflicting testimony.[3]

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[3] This proceeding was procedurally unfair to Judge Van Voorhis in other respects as well. For example, Judge Van Voorhis' March 3rd, 2003, request to the Commission to present dispositional evidence was

Nearly two months after retiring to deliberate over Judge Van Voorhis' fate, the commission amended Rule 134. On January 29th, 2003, rule 134 was amended to allow the commission members to vote without attending the rule 121 evidentiary proceeding before the special masters. Rule 134 now provides that the commission members are only required to attend the subsequent rule 132 oral argument before the commission.

California law provides that: "Due process requires a fair trial before an impartial tribunal. Such a trial requires that the person or body who decides the case must know, consider and appraise the evidence." Vollstedt v. City of Stockton (1990) 220 Cal.App.3d 265, 269. The fundamental principle is that "the one who decides must hear." (Ibid.) While due process does not require the decision maker to necessarily attend the evidentiary hearing, or to consider every page of the record before making a decision, California state law does require compliance with the applicable procedures specified in the statute or ordinance in order for the discharge to be valid. Layton v. Merit System Commission (1976) 60 Cal.App.3d 58, 63.

Here, the commission failed to comply with its own rules in removing Judge Van Voorhis. Apparently, upon recognizing that it failed to comply with rule 134, the commission then amended the rule in an ex post facto attempt to legitimize what was clearly an invalid hearing.

Improper removal of publicly elected officials undermines our democratic system of government if

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denied without explanation. This is discussed below. (Appendix, at pp. 2-5.)

accomplished without compliance with the procedural safeguards set forth in the commission's own rules. A judge cannot be deprived of this significant procedural safeguard after the fact for the sake of convenience because it can affect hearing tactics.

In anticipation of an argument that Judge Van Voorhis waived this objection by failing to object during the rule 121 proceeding, it is respectfully submitted that the requirements of rule 134 cannot be waived. These requirements are jurisdictional. Simply stated, if a commission member wanted to affect the disposition of a particular judge, then that commission member should have been present at the evidentiary hearing. There is no exception to this rule and it is self-executing.

Moreover, an objection by the respondent judge during the proceedings is not feasible. The commission may discipline a judge with only six affirmative votes, so it is not necessarily objectionable for as many as five commission members to ignore the entire evidentiary hearing. Rules of the Commission on Judicial Performance, rule 134. As a practical matter, it would be procedurally awkward to require a judge to make an objection at the outset of the hearing that some, or all, of the commission members are not present and then again after each break in the proceedings. The burden is on the commission members under former Rule 134 to attend the hearing if they wish to affect the disposition. The burden should not be placed on the respondent judge to determine which commission members are in attendance and whether an objection is warranted based on the level of attendance.

A. THE COMMISSION'S INTERPRETATION OF FORMER RULE 134 IS IRRELEVANT BECAUSE RULE 134 IS UNAMBIGUOUS.

The commission argued in its brief to the California Supreme Court that it never interpreted former rule 134 to require the commission members' attendance at the rule 121 hearing and that its interpretation should control.

The commission begins the analysis of its former rule 134 by acknowledging that the "same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies." (Appendix, at p. 147.) The commission then argues that it has always interpreted rule 134 to require the commission members' attendance at the rule 132 hearing, but not the rule 121 hearing and that the reference to rule 121 in former rule 134 was "inadvertent and in error." (Appendix, at p. 146.)

The commission's argument is without merit. Its interpretation of rule 134 and the legislative history of rule 134 are not relevant considerations because rule 134 is not ambiguous. Former rule 134 plainly references rule 121 (and not rule 132) in the text of the rule. Regardless of how the commission interprets rule 134, there is only one reasonable construction of the rule.

Because rule 134 is unambiguous, under California law, there is no need to consider legislative history to interpret the rule.[4] As has been frequently said: "In construing the terms of a statute [the court] resort[s] to the legislative history of the measure only if its terms are

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[4] This is not so much a question of interpretation as it is one of the commission asking the Court to redraft former rule 134 in order to substitute Rule 132 in place of Rule 121.

ambiguous." Title Ins. & Trust Co. v. County of Riverside (1989) 48 Cal.3d 84, 96. An ambiguity arises only if ". . . there [is] more than one construction in issue which is semantically permissible, i.e., more than one usage which makes sense of the statutory language given the context and applicable rules of usage." County of Sutter v. Board of Administration (1989) 215 Cal.App.3d 1288, 1295. Here, multiple constructions of rule 134 are not possible.

To consider extrinsic evidence as urged by the commission in interpreting rule 134 would violate the principle that, when statutory language is clear and unambiguous, there is no need for construction, and courts should not indulge in it." Solberg v. Superior Court (1977) 19 Cal.3d 182, 198. This rule is deeply rooted in American jurisprudence. Sturges v. Crowninshield (1819) 17 U.S. 122, 202.

> In any case involving statutory interpretation, our fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.]" (People v. Murphy (2001) 25 Cal.4th 136, 142.) Where statutory language is clear and unambiguous--i.e., it has only one reasonable construction -- judicial construction is generally unnecessary. (Hughes v. Board of Architectural Examiners (1998) 17 Cal.4th 763, 775.)

The commission's argument is very similar to an argument that was advanced and rejected in Planned Parenthood Affiliates v. Swoap (1985) 173 Cal.App.3d 1187. The facts of Planned Parenthood arose from a clerical error in the California State Budget. In 1985-1986, the California State Budget originally contained a section (section 33.35), which restricted the use of family planning funds for organizations providing abortion-related services. The Legislature, by a two-thirds majority, voted to delete the provision, but because of a clerical error, the deletion was never made. The Governor, although requested by the Speaker of the Assembly to correct the bill, signed it, stating that he was opposed to use of public funds for such services. Petitioners, a coalition of family planning organizations and state officers, sought mandamus to compel respondent Secretary of Health and Welfare to refrain from enforcing the section. The Court held that the petition could not be granted on this showing.

The Court clarified that the issue in Planned Parenthood was not one of interpretation to carry out legislative intent. The words of section 33.35 were clear, so extrinsic evidence simply could not be used to nullify the provision as enacted. Planned Parenthood, 173 Cal.App.3d at p. 1193. The Court held that the appropriate remedy for mistakes in budget bills is a "cleanup bill" to correct the errors. Id., at p. 1195; See also, Ceridian Corp. v. Franchise Tax Board (2000) 85 Cal.App.4th 875, 889; Sacramento v. Public Employees' Retirement System (1994) 22 Cal.App.4th 786, 793.

There is a sound justification for not relying upon extrinsic evidence to interpret an unambiguous statute: "If the meaning of a statute can be declared without the support of a statutory text, the law is not made "by" the

statute, it is made by the courts in violation of the Constitution. This does not mean that legislative history may not be brought to bear upon the construction of the statutory text. Its utility, however, is confined to that task. The significance to be accorded extrinsic evidence of legislative intention (or purpose) depends upon its capacity to resolve ambiguities in statutory language . . .." In-Home Supportive Services v. Worker's Comp Appeals Bd. (1984) 152 Cal.App.3d 720, 739.

Rule 134 is unambiguous and the Commission's argument that its interpretation of the statute should instead control is without merit.

1. The Absence Of The Commission Members From The Rule 121 Hearing Is A Jurisdictional Error That Cannot Be Waived.

Before the California Supreme Court, the commission contended that Judge Van Voorhis waived his objection regarding non-compliance with Rule 134 by not raising it first with the commission at either the rule 121 or rule 132 hearings. (Answer, at p. 12.) However, former Rule 134-is a jurisdictional rule and non-compliance cannot be waived. A noncurable defect of substance where the question is one of law, such as lack of jurisdiction, is not waivable. See, Twine v. Compton Supermarket (1986) 179 Cal.App.3d 514, 518 [questions of jurisdiction may be raised for first time on appeal.] Thus, contrary to the Commission's argument the issue of whether the Commission acted in excess of its jurisdiction in violating Rule 134 is not waivable.

As stated by the California Supreme Court in Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, at p. 291:

> The concept of jurisdiction embraces a large number of ideas of similar character, some fundamental to the nature of any judicial system, some derived from the requirement of due process, some determined by the constitutional or statutory structure of a particular court, and some based upon mere procedural rules originally devised for convenience and efficiency, and by precedent made mandatory and jurisdictional. Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari. And, as a practical matter, accuracy in definition is neither common nor necessary."

In Rodman v. Superior Court (1939) 13 Cal.2d 262, the California Supreme Court held that "it seems well settled ... that when a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction." Rodman, at p. 269. Here, the Commission acted in excess of its

jurisdiction because none of the Commission members who voted to remove Judge Van Voorhis attended the Rule 121 hearing as required by former Rule 134.

2. The Commission's Use Of Amended Rule 134 In Place Of Former Rule 134 Was An Improper Retroactive Application Of The Rule.

In general, the legislature may cure irregularities or omissions to comply with provisions of a statute which could have been omitted in the first instance. Miller v. McKenna (1944) 23 Cal.2d 774, 782. However, the Legislature cannot cure defects which are jurisdictional. Among the jurisdictional requisites are sufficient notice and opportunity for hearing to constitute compliance with due process. Ibid.

As discussed above, the commission acted in excess of its jurisdiction in not attending the Rule 121 hearing and then voting on the disposition of Judge Van Voorhis. While the precise date of the commission vote is not clear, the commission members in fact retired to deliberate on December 4th, 2002 and the amendment to Rule 134 did not occur until January 29th, 2003. Thus, it is extremely unlikely that amended Rule 134 had been enacted at the time of the commission vote in this matter.

Even if amended Rule 134 was in effect at the time of the vote, which is doubtful, the amendment is more than just a procedural change. The commission's non-compliance with former Rule 134 was a jurisdictional defect that cannot be cured by subsequent amendment. Attendance at the Rule 121 hearing was a jurisdictional requirement under former Rule 134. The commission acted

in excess of its jurisdiction in failing to attend the hearing and that defect cannot now be cured by retroactive amendment to the rule.

There were real consequences to Judge Van Voorhis resulting from the commission's failure to attend the Rule 121 hearing. In particular, had the commission attended the Rule 121 hearing, then the members could have personally observed the testimony of several witnesses to Judge Van Voorhis. This testimony was unreasonably rejected by the masters without an evidentiary basis for doing so. Had the commission members been present at the hearing, then they could have observed this testimony firsthand.

B. The Level Of Discipline Imposed Upon A Judge Should Not Be Affected By An Unsuccessful Defense Before The Special Masters.

The Commission identified five considerations that were relevant to the level of discipline imposed in this case. Two of these considerations are: Whether the judge appreciates the inappropriateness of his actions; and, whether the judge is likely to engage in unethical conduct in the future. (See, Appendix, at p. 104.) Both of these considerations are extremely unfair for use as an element in the level of discipline imposed and violate Judge Van Voorhis' due process rights.

First, the commission essentially found that Judge Van Voorhis did not appreciate the inappropriateness of his actions because he offered evidence to defend his conduct. The masters either did not credit this evidence or did not give it much weight. As a fact-finder, that is their role. However, for the commission to then make a finding that

Judge Van Voorhis does not appreciate the nature of his misconduct because he unsuccessfully contested the allegations in the Notice of Formal Proceedings is procedurally unfair. Judge Van Voorhis has a due process right to contest the charges made by the commission and he should not be punished for exercising that right.

Similarly, the commission reasoned that because Judge Van Voorhis contested the charges, that he is not remorseful for his conduct and it is "close to a certainty" that Judge Van Voorhis will reoffend. (Appendix, at p. 117.) The commission then unjustly placed the burden on Judge Van Voorhis to produce "evidence that he appreciates how the Masters and the Commission could find misconduct." (Appendix, at p. 117.) There is no better illustration of the impossible situation in which the commission places a respondent judge. Under this scenario, a respondent judge is required to both deny that the allegation is accurate, and then also produce evidence that he is genuinely remorseful in the event that the Masters eventually resolve factual issues against him. All of this must occur in the same hearing which is incredibly prejudicial to the defense. It is not credible to mount a defense to allegations of misconduct when the commission also expects the judge to produce evidence that he or she appreciates the nature of the misconduct in the same hearing. It is inherently contradictory.

C. Due Process Requires A Dispositional Hearing Prior To The Imposition Of Discipline.

The commission rules do not provide for a mandatory dispositional hearing after a finding of misconduct by the masters relative to the level of discipline

to be imposed. However, the commission rules are clear that the issue of discipline is not before the masters so there was no forum in which Judge Van Voorhis could fairly present evidence bearing on the appropriate level of discipline. See, Rules of the Commission on Judicial Performance, Rule 129(d). In cases where the allegations of misconduct are disputed, dispositional evidence related to the level of discipline to be imposed cannot reasonably be placed before the masters. Not only is such evidence irrelevant because it relates to discipline, but it is extremely prejudicial to the respondent judge's effort to defend against allegations that are contested.

Compounding the problem, there is no mandatory procedure for the commission to hear evidence of an appropriate disposition from the judge. There is a discretionary provision in the rules. (Rules of the Commission on Judicial Performance, Rule 133.) On March 3rd, 2003, Judge Van Voorhis invoked this provision and made a written request to submit additional evidence pursuant to rule 133, but that request was denied without explanation. (Appendix, at pp. 2-5.) This denial is a violation of due process.

Among other things, Judge Van Voorhis intended to offer evidence that he presided over 64 jury trials without incident in the last 18 months and that he was handling things better. (Appendix, at p. 119.) The commission refused to consider this evidence because it was not in the record. For the reasons discussed above, it would be manifestly unfair to have required Judge Van Voorhis to submit this evidence during the hearing before the masters because it is in effect a concession that the allegations are true, which was disputed in important respects. If dispositional evidence must be presented initially before

the special masters, it makes it very difficult for a judge to realistically confine character evidence when litigating the charges.

For example, in a criminal proceeding, combining a contested adjudication of what occurred and what punishment should be imposed is a violation of the Due Process Clause. The removal of a judge from elected office should also require this minimal Due Process protection.

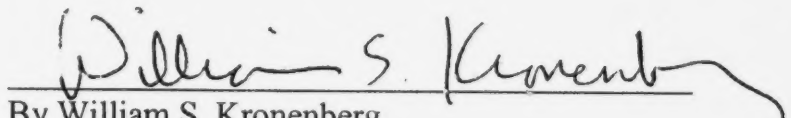
As discussed above, at the rule 121 hearing, the special masters were not empowered to make any decision regarding the level of discipline. The Special Masters considered dispositional evidence irrelevant, except as character evidence to prove conduct. Therefore, it was inappropriate to advocate mitigating factors during the controverted adjudication of the alleged misconduct. However, at the Commission hearing, it was immediately announced that a short time limit was set for oral argument. The presentation of witnesses or other evidence was not allowed. Crucial objections raised in the briefing had not been resolved. Findings on the allegations had not been made by the Commission, whose members were not bound by the findings of the Special Masters. Although the Commission had yet to decide what had happened, the advocates had to discuss what should be done about it. In the few minutes time that was allotted, Judge Van Voorhis could only summarize his main legal objections and briefly try to convey his faithfulness to justice. After over eleven years as a prosecutor and over sixteen years as a judge, facing many allegations against him, he was given just a few minutes to address everything. That's not fair. He should have been given an opportunity to present evidence regarding the level of discipline after findings on the allegations.

IX. CONCLUSION

It is respectfully submitted that the commission's decision and order of removal in this matter violated Judge Van Voorhis' procedural due process rights under the 14th Amendment of the United States Constitution. It is respectfully requested that this matter be set for briefing and oral argument on the merits pursuant to Rule 16 of the Rules of the United States Supreme Court.

Dated: February 4, 2004

MURPHY, PEARSON, BRADLEY & FEENEY



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